

13 CV 1544

## CIVIL COVER SHEET

2/12)

44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS** FRANK K. NETHKEN and  
VELMA D. NETHKEN, h/w

(b) County of Residence of First Listed Plaintiff  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

PAUL, REICH & MYERS, P.C.  
1608 WALNUT ST. #500  
PHILA, PA 19103

215-735-9200

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

1 U.S. Government Plaintiff

3 Federal Question  
(U.S. Government Not a Party)

2 U.S. Government Defendant

4 Diversity  
(Indicate Citizenship of Parties in Item III)

**DEFENDANTS**

CSX TRANSPORTATION

500 WATER ST.

JACKSONVILLE, FL 32202

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF  
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF	PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4 <input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5 <input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> PERSONAL INJURY	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 375 False Claims Act
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 423 Withdrawal	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 410 Antitrust	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander		<input type="checkbox"/> 415 Health Care/Pharmaceutical	<input type="checkbox"/> 420 Banks and Banking
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employer Liability		<input type="checkbox"/> 367 Personal Injury - Product Liability	<input type="checkbox"/> 430 Commerce
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine		<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 440 Deportation
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)	<input type="checkbox"/> 345 Marine Product Liability		<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle		<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability		<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury		<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 850 Securities/Commodities Exchange
<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 362 Personal Injury - Medical Malpractice		<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 196 Franchise			<input type="checkbox"/> 720 Labor/Management Relations	<input type="checkbox"/> 891 Agricultural Acts
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	SOCIAL SECURITY	<input type="checkbox"/> 861 HIA (1395ff)
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> Habeas Corpus:	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 463 Alien Detainee	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 896 Arbitration
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 530 General	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 535 Death Penalty		<input type="checkbox"/> 950 Constitutionality of State Statutes
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> Other:		
	<input type="checkbox"/> 448 Education	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 462 Naturalization Application	
		<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 465 Other Immigration Actions	
		<input type="checkbox"/> 555 Prison Condition		
		<input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement		
FEDERAL TAX SUITS				
			<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
			<input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
IMMIGRATION				
			<input type="checkbox"/> 462 Naturalization Application	
			<input type="checkbox"/> 465 Other Immigration Actions	

**V. ORIGIN** (Place an "X" in One Box Only)

1 Original Proceeding

2 Removed from State Court

3 Remanded from Appellate Court

4 Reinstated or Reopened

5 Transferred from Another District (specify)

6 Multidistrict Litigation

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

**VI. CAUSE OF ACTION**

Brief description of cause:

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION  
UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:  
JURY DEMAND:  Yes  No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

MAR 25 2013

SIGNATURE OF ATTORNEY OF RECORD

DATE

**FOR OFFICE USE ONLY**

RECEIPT #

AMOUNT

APPLYING IFFP

JUDGE

MAG. JUDGE

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**

## Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
  
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
  - United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
  - United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
  - Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
  - Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
  
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
  
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
  
- V. Origin.** Place an "X" in one of the six boxes.
  - Original Proceedings. (1) Cases which originate in the United States district courts.
  - Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
  - When the petition for removal is granted, check this box.
  - Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
  - Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
  - Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
  - Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
  
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
  
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
  - Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
  - Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
  
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

**FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM** to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 6507 Locelike Row, Columbia, MD 21045

**13 1544**

Address of Defendant: 500 Water Street, Jacksonville, FL 32202

Place of Accident, Incident or Transaction: \_\_\_\_\_  
(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes  No

Does this case involve multidistrict litigation possibilities? Yes  No

*RELATED CASE, IF ANY:*

Case Number: \_\_\_\_\_ Judge \_\_\_\_\_ Date Terminated: \_\_\_\_\_

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?

Yes  No

2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?

Yes  No

3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?

Yes  No

4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?

Yes  No

**CIVIL: (Place ✓ in ONE CATEGORY ONLY)**

A. *Federal Question Cases:*

1.  Indemnity Contract, Marine Contract, and All Other Contracts
2.  FELA
3.  Jones Act-Personal Injury
4.  Antitrust
5.  Patent
6.  Labor-Management Relations
7.  Civil Rights
8.  Habeas Corpus
9.  Securities Act(s) Cases
10.  Social Security Review Cases
11.  All other Federal Question Cases

(Please specify) \_\_\_\_\_

B. *Diversity Jurisdiction Cases:*

1.  Insurance Contract and Other Contracts
2.  Airplane Personal Injury
3.  Assault, Defamation
4.  Marine Personal Injury
5.  Motor Vehicle Personal Injury
6.  Other Personal Injury (Please specify)
7.  Products Liability
8.  Products Liability — Asbestos
9.  All other Diversity Cases

(Please specify) \_\_\_\_\_

**ARBITRATION CERTIFICATION**

(Check Appropriate Category)

, counsel of record do hereby certify:

Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;

Relief other than monetary damages is sought.

DATE: 3/25/13

*Robert E. Paul*  
Attorney-at-Law

21252

Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

MAR 25 2013

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 3/25/13

*Robert E. Paul*  
Attorney-at-Law

21252

Attorney I.D.#



**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**CASE MANAGEMENT TRACK DESIGNATION FORM**

FRANK K. NETHKEN and  
VELMA D. NETHKEN, h/w  
v.  
CSX TRANSPORTATION INC.

:  
:  
:  
:

CIVIL ACTION

13 1544

NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

**SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:**

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ( )
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ( )
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ( )
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. (X)
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ( )
- (f) Standard Management – Cases that do not fall into any one of the other tracks. ( )

3/25/13  
Date

Robert E. Paul  
Attorney-at-law

Plaintiff  
Attorney for

215-735-9260  
Telephone

215-735-3888  
FAX Number

repaule@prmpclaw.com  
E-Mail Address

(Civ. 660) 10/02

MAR 25 2013



**Civil Justice Expense and Delay Reduction Plan  
Section 1:03 - Assignment to a Management Track**

- (a) The clerk of court will assign cases to tracks (a) through (d) based on the initial pleading.
- (b) In all cases not appropriate for assignment by the clerk of court to tracks (a) through (d), the plaintiff shall submit to the clerk of court and serve with the complaint on all defendants a case management track designation form specifying that the plaintiff believes the case requires Standard Management or Special Management. In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a case management track designation form specifying the track to which that defendant believes the case should be assigned.
- (c) The court may, on its own initiative or upon the request of any party, change the track assignment of any case at any time.
- (d) Nothing in this Plan is intended to abrogate or limit a judicial officer's authority in any case pending before that judicial officer, to direct pretrial and trial proceedings that are more stringent than those of the Plan and that are designed to accomplish cost and delay reduction.
- (e) Nothing in this Plan is intended to supersede Local Civil Rules 40.1 and 72.1, or the procedure for random assignment of Habeas Corpus and Social Security cases referred to magistrate judges of the court.

**SPECIAL MANAGEMENT CASE ASSIGNMENTS**  
**(See §1.02 (e) Management Track Definitions of the**  
**Civil Justice Expense and Delay Reduction Plan)**

Special Management cases will usually include that class of cases commonly referred to as "complex litigation" as that term has been used in the Manuals for Complex Litigation. The first manual was prepared in 1969 and the Manual for Complex Litigation Second, MCL 2d was prepared in 1985. This term is intended to include cases that present unusual problems and require extraordinary treatment. See §0.1 of the first manual. Cases may require special or intense management by the court due to one or more of the following factors: (1) large number of parties; (2) large number of claims or defenses; (3) complex factual issues; (4) large volume of evidence; (5) problems locating or preserving evidence; (6) extensive discovery; (7) exceptionally long time needed to prepare for disposition; (8) decision needed within an exceptionally short time; and (9) need to decide preliminary issues before final disposition. It may include two or more related cases. Complex litigation typically includes such cases as antitrust cases; cases involving a large number of parties or an unincorporated association of large membership; cases involving requests for injunctive relief affecting the operation of large business entities; patent cases; copyright and trademark cases; common disaster cases such as those arising from aircraft crashes or marine disasters; actions brought by individual stockholders; stockholder's derivative and stockholder's representative actions; class actions or potential class actions; and other civil (and criminal) cases involving unusual multiplicity or complexity of factual issues. See §0.22 of the first Manual for Complex Litigation and Manual for Complex Litigation Second, Chapter 33.

*ff 350*  
PAUL, REICH & MYERS, P.C.  
By: Robert E. Paul, Esquire  
Identification No. 21252  
1608 Walnut Street, Suite 500  
Philadelphia, PA 19103  
(215) 735-9200

Attorney for Plaintiff

---

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA  
CIVIL SECTION: TRIAL DIVISION

---

FRANK K. NETHKEN and	:	CIVIL ACTION
VELMA D. NETHKEN, h/w	:	
6507 Lacelike Row	:	
Columbia, MD 21045	:	
	:	
vs.	: NO.	13 1544
	:	
CSX TRANSPORTATION INC.	:	
500 Water Street	:	
Jacksonville, FL 32202	:	<u>ASBESTOS CASE</u>

---

PAUL, REICH & MYERS, P.C.  
By: Robert E. Paul, Esquire  
Identification No. 21252  
1608 Walnut Street, Suite 500  
Philadelphia, PA 19103  
(215) 735-9200

Attorney for Plaintiff

---

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA  
CIVIL SECTION: TRIAL DIVISION

---

FRANK K. NETHKEN and	: CIVIL ACTION
VELMA D. NETHKEN, h/w	:
6507 Lacelike Row	:
Columbia, MD 21045	:
vs.	: NO. <b>13 1544</b>
CSX TRANSPORTATION INC.	:
500 Water Street	:
Jacksonville, FL 32202	: <u>ASBESTOS CASE</u>

---

COMPLAINT

1. Plaintiffs, Frank K. Nethken and Velma D. Nethken, husband and wife, reside at 6507 Lacelike Row, Columbia, MD, and are citizens of the State of MD.

2. Plaintiff, Frank K. Nethken, was born on January 5, 1931, and his Social Security Number is 214-28-6213.

3. Plaintiff, Frank K. Nethken's only dependent is his wife Velma D. Nethken.

4. Plaintiff, Frank K. Nethken, has smoked approximately 1 1/2 pack(s) of cigarettes per day from 1951 until 2012.

5. Plaintiff's Social Security and IRS records will be furnished upon receipt.

6. Plaintiff's work history is as follows:

(a) From 01/01/50 to 01/01/55 - B&O Railroad

(Cumberland, MD) as a machinist apprentice.

(b) From 01/01/50 to 01/01/52 - U.S. Navy as a ground controller.

(c) From 01/01/57 to 01/01/58 - Cumberland Steel (Cumberland, M.D.) as a machinist.

(d) From 01/01/58 to 01/01/64 - Allegheny Ballistics Lab (Now ATK Rocket Center WV) as a rocket inspector.

(e) From 01/01/64 to 01/01/93 - B&O Railroad (Columbia, MD) as a machinist.

(f) From 01/01/78 to 01/01/82 - City of Cumberland as a mayor.

7. Plaintiff was exposed to asbestos at all sites set forth supra.

8. All allegations against defendants named in this lawsuit which were made in the Complaints filed in the Master Complaint approved by Judge Weiner for use in asbestos cases in 1986 are incorporated by reference.

9. The defendants are those companies listed in the caption. The principal places of business and the states of incorporation of each of the defendants are set out in the above-referenced filed master complaint or herein.

(a) CSX is a Florida Corporation with a principal place of business in Florida. It is the successor in interest to the Chesapeake and Ohio Railroad and is or was the FELA employer of the injured person herein.

(b) CSX Transportation is the successor in interest to

the Baltimore & Ohio, Cheasapeake & Ohio and Chessie Systems. It is liable as the employer of plaintiff pursuant to the Federal Employer Liability Act and the Boiler Inspection Act as plaintiff was employed by CSX or one of its predecessor railroad companies.

10. During the course of his employment at the worksites noted in Paragraph 6 supra, plaintiff believes and therefore avers that he was exposed to asbestos fiber or asbestos products manufactured, sold, distributed, or otherwise placed into the stream of commerce by the defendants. The term asbestos products as used herein includes asbestos-containing products such as boilers and engines and furnaces and turbines. The term asbestos-containing as used herein means products sold with asbestos or products whose designers, manufacturers and fabricators knew, should or could have known that it would be insulated or could be insulated with asbestos. The railroad is liable under the FELA and Boiler Inspection Acts.

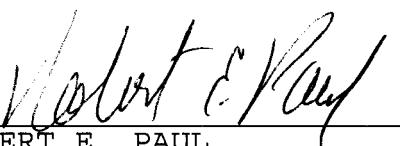
11. Plaintiff does not now know whether or not he was exposed to asbestos products at worksites other than those enumerated in Paragraph 6 above, but he reserves his right to assert at trial that he was so exposed at the other sites, should such evidence develop. Plaintiff avers that should such evidence develop, he will promptly notify defendants well in advance of trial.

12. Plaintiff, Frank K. Nethken, was diagnosed as having contracted Lung Cancer as a result of his asbestos exposure by Dr. Howard L. Siegel, M.D. on or about January 30, 2012 and such

diagnosis was accompanied by discernible or ascertainable physical symptoms and/or functional impairment and/or other detrimental effects as a result of the exposure to asbestos. Plaintiff has developed symptoms due to his asbestos inhalations and injuries.

**WHEREFORE**, plaintiffs demand of defendants a sum in excess of One Hundred Thousand Dollars (\$100,000.00), exclusive of interest and costs for compensatory damages, and in punitive damages.

PAUL, REICH & MYERS, P.C.

BY:   
ROBERT E. PAUL